

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 15th DAY OF MAY, 2020

BEFORE HIS LORDSHIP: HON.JUSTICE K.N.OGBONNAYA

COURT 25.

SUIT NO.:FCT/HC/BW/27/18

BETWEEN

OGBU MATHEW -----CLAIMANT

AND

BWARI AREA COUNCIL -----DEFENDANT

RULING

In a writ of summons filed on the 19/12/18 the Plaintiff, Ogbu Mattew claimed the following reliefs against the Defendant, Bwari Area Council.

Payment of N27,875.320.00 (Twenty seven million eight hundred and seventy five thousand Three hundred and twenty Naira), as Special

damages and Statutory compensation for irredeemable damage/injury loss suffered by him. Payment of N75,000,000.00 (Seventy Five Million Naira) as General Damages. 6% interest on the said sum of N27,875,320.00 (Twenty seven million eight hundred and seventy five thousand Three hundred and twenty Naira), from 27/2/18 till Judgment is delivered. Another interest of 10% of Judgment sum from date of Judgment till final liquidation. N200,000 Two hundred thousand as cost of the Suit and Omnibus Prayer. The claim is for compensation for the loss suffered in fire incident of December 25th 1017. He also want this Court to Declare that the Defendant is under Statutory obligation to insure Bwari Market together with the stalls and stores therein which are Public buildings as well as Defendants property, against fire hazard.

A Declaration that he as an allottee/occupier of the said property is entitled to compensation for loss/damages of his goods in the fire incidence of 25/12/17 that gutted the market and razed down his stall/store and the goods therein. Another declaration that Defendant is bound by law to pay to him or caused to be paid to him prompt and adequate compensation for the loss/damages of his goods in the said fire incidence of 25/12/17.

Upon receipt of the Writ, the Defendant entered appearance and filed a Preliminary Objection challenging the Jurisdiction of the Court to entertain this Suit. The Preliminary Objection is based on the following grounds:

That the Suit was instituted after the Statutory period of 3 months contrary to Section 2(1) Public Officers Protection Act CAP 41 LFN. That the matter is predicated on Insurance Act.

Again that the appropriate Court to deal with Insurance claims under the Insurance Act is the Federal High Court. That this Court lacks the Jurisdiction to entertain the Suit and that the Defendant is not a proper party in this Suit.

The Defendant supported the Preliminary Objection with an Affidavit of 10 Paragraphs. The Defendant had urged the Court to dismiss this Suit. It is imperative to state that the Defendant did not file any statement of Defence to defend this Suit as required since demurrer proceeding does not operate in this Jurisdictional clime.

In the written address the Defendant raised 3 issues for Determination which are:

1. Whether the Suit is statute barred by virtue of Public Officers Protection Act.
2. Whether the Court has the Jurisdiction to entertain the claim of the Claimant.
3. Whether the Defendant is a proper party .in this Suit.

ISSUE NO.1.

The Defendant submitted that this Suit was instituted outside the Statutory period of 3 months since the Suit is against a Public Officers, when the cause of action took place. That the cause of Action rose on 25/12/17 and 23/2/18 while the Suit was instituted on the 23/2/18.

He referred to the case of:

EGBE Vs ADEFERASIN (1987) 1 NWLR (PT.47)

That the failure of the Plaintiff to commence this Action within 3 months allowed by Law is fatal to his case. He cited the provisions of section 2 (a) Public Officers Protection Act.

That the action having been initiated after 3 months is statute barred and it urged Court to dismiss it. He referred to the case of:

OSUN STATE GOVERNMENT Vs DANLAMI (NIG) LTD (2007) ALL FWLR (PT.365) 439 @467 PARAGRAPH A-B

He urged Court to resolve the Issue No.1 in the Defendant's favour.

ISSUE NO.2

On whether the Court has Jurisdiction to entertain this Suit, it submitted that since the claim is on Insurance, it should be guided by Insurance Act. That by virtue of section 251 (1) (s) 1999 Constitution as amended that cases on Insurance claims are to be heard at the Federal High Court. That instituting this action at the FCT High Court makes the Suit to be incompetent as this Court has no Jurisdiction to entertain it. He referred to 251 (1) (s) 1999 Constitution as amended and also section 102 Insurance Act, where Court is defined Court as the Federal High Court. That by the corroboration of the provisions of the law, it is only the Federal High Court that possesses the exclusive Jurisdiction to hear and determine this Suit. It urged the Court to strike the matter out. It laid credence referred to the case of:

OKOLO &ANOR Vs USN LTD (2004) 3NWLR (PT.589)

ISSUE NO.3

On whether Defendant is proper party they submitted, that once all parties necessary to invoke the Judicial power of the Court are not before the Court the Court will not have Jurisdiction to grant the Relief Sought in the Suit since Plaintiff has no Locus Standi. They referred to the case of:

OLORINDE Vs OYEBI (1984) 1 SCNLR 390

They submitted that by virtue of Section 93(1) & (2) Insurance Act 1997, the responsibility of insuring all Court properties is vest on the National Insurance Corpn of Nigeria-NICON. It referred to:

CORPORATE IDEAL INS. LTD Vs AJAOKUTA STEEL CO. LTD (2014) 7 NWLR (PT.1405) 165

That the Plaintiff's failed to join the proper party in this Suit which is National Insurance Corporation of Nigeria. That instituting the action against the Defendant is not proper because the Defendant is not a proper party by virtue of the Plaintiff's claims. He urged the Court to decline Jurisdiction and strike out this Suit.

Upon receipt of the Preliminary Objection the Plaintiff filed a Counter Affidavit of 11 paragraphs deposed to by Vivian Akowei. She submitted that the Defendant is a proper party and that the action of the Plaintiff is not Statute barred and that the Court has Jurisdiction to entertain it.

She stated that since the claim of the Plaintiff is based on breach of contract by the Defendant it is not affected by the statute of limitation and the provisions of the Public Officers Protection Act. That is based on the decision of both the Court of appeal and Supreme Court in the following cases:

NPA Vs CONSTRUZIONI GENERAL (1974) 1 ALL NLR 463

**A-G RIVERS Vs A-G BAYELSA & ANOR (2013) 3 NWLR (PT.1340) 123
@ 148-149**

In the above cases the Court held that an action for breach of contract does not fall within contemplation of Section 2 (a) Public Officers Protection Act. That going by the averments in paragraphs 3,8,9,10-16 it is clear that Plaintiff entered into a contract with the Defendant when Defendant issued him a letter of allocation dated 3/9/14 for the stall/open space shop and on an annual rent of N4,800.00 (Four thousand Eight hundred Naira). That the allocation is subject to renewal every 5 years. That the current renewal paid by him is still subsisting and valid even before the fire gutted the market and destroyed his wares.

That the Insurance Act, Section 65(1), provides that every Public Building should be insured against hazard of collapse, fire, earthquake, storm and flood and other disasters. That the market stall allocated to him by the Defendant is supposed to be insured against those elements/hazards as contained in section 65(1) Insurance Act 2003. That that provision of the Act is a statutory duty imposed on the Defendant by law which the Defendant must fulfill. That that duty is implied in the Defendant contract with him as far as the allocation is concern.

That the Plaintiff's claims borders on compensation for the goods lost in the fire and other damages. That the Public Officers Protection Act permits action to be brought after the cessation of the injury which entails outside the 3 months period as stated in the Act. That in this case there has been continuance of damage by the

Defendant refusal to pay for the breach and refusal to give details of the insurance policy of the stall in the market. He referred to:

NNPC Vs NWODO (2018) LPELR-45872(CA)

NWAFOR Vs NCS & ORS (2018) LPELR-45034(CA)

He submitted that continuance of damage/injury in this Suit is continuance in injury which has not ceased. That he is still within the ambit of the law to bring this Suit /claim and has the right to have instituted the suit more than 3 months after, since the injury continues up till now. He urged Court to so hold.

That paragraph 35, 36, 41 and 63 of the statement of claim contains the details of injury suffered by him. That the defence under Public officers Protection cannot avail the defendant in this action as the Defendant acted outside its statutory and Constitutional powers/duty. That it is not the Constitutional and Statutory duty of the Defendant to withhold the shop Insurance Policy details over the burnt stalls in the market when the Plaintiff demanded that. That provision of Section 2 Public Officer Protection Act cannot and does not apply to any act done in the abuse of Office and with no semblance of legal Justification. He referred to the case of:

SULE & ORS Vs ORISAJIMI (2019) LPELR- 47093 (SC)

AWOLOLA Vs GOV. EKITI STATE (2018) LPELR 463646 (SC)

That the claim of the Plaintiff is on negligence. That Defendants negligence is evident in the Insurance Policy details requested by him. That law of Tort of Negligence remains ever applicable notwithstanding the statute or law. That negligence is part of the

Plaintiff's claim based on the pains and sufferings as well as damages suffered caused by the said negligent act of the Defendant which is still continues and subsisting.

That his agony, pains suffered, and loss of earnings which he suffers and continued to suffer were aggravated by the continued negligence of the Defendant. That since the negligence is continues and the damages suffered too, the fresh cause of action arises from time to time as often as the damage is caused.

He referred to the case of:

NIGERIAN AIRWAYS Vs ABE (1988) NWLR (PT.90) 524 RATIO 6

ISSUE NO 2:

On Court Jurisdiction to entertain this case, the plaintiff submitted that the Court has the requisite Jurisdiction to entertain his claim. That the use of the statute, Public Officers Protection Act to perpetuate or foster deliberate or fraudulent concealment of facts by Defendant is not permitted in law. That using such submission to stall this case as a defence by challenging the jurisdiction of the Court cannot stand. He urged Court to so hold.

On the submission that the Plaintiff case is predicated solely on Insurance Claim, the Plaintiff submitted, disagreeing with the Defendant and stated that Section 251 (1) (s) 1999 Constitution as amended or Section 102 Insurance Act 2003 did not confer any exclusive Jurisdiction on the Federal High Court to hear issue of Insurance . That in this case the claim of the Plaintiff is beyond Insurance claim as it is fundamentally predicated on breach of simple

contract of tenancy and on Tort of Negligence. That Supreme Court had in the case of:

NNPC Vs NWODO (Supra)

Show that Section 251 (1) (a) (s) does not rest on Federal high Court exclusive jurisdiction on claims that is based on simple contract of insurance. That Section 73 Insurance Act has nothing to do with conferring jurisdiction on issue of insurance claim that arises from simple contract and breach thereof.

That the jurisdiction of FCT High Court was conferred by the Constitution and has not been ousted by Insurance Act of 2003. This Court has jurisdiction to entertain the claims of the Plaintiff. He urged the Court to so hold that Federal High Court has no jurisdiction exclusive to entertain matters of simple contract. He referred to:

SUN INSURANCE Vs UMEZ ENGINEERING CONST. CO LTD (2015) LPELR-24737 SC

AHMED & ORS Vs REGISTERED TRUSTEES OF ARCHDIOCES OF KADUNA CATHOLIC CHURCH (2019) LPELR 464414 (SC)

RAHMAN BROTHERS LTD Vs NPA (2019) LPELR-46415 (SC)

He submitted that the Tort of Negligence is outside the scope of jurisdiction of the Federal High Court under the Constitution. That it is trite and proper that this Court assumes and retains jurisdiction over this case. He urged the Court to so hold.

ISSUE NO.3

On the Defendant not being a proper party, the Plaintiff submitted that the Defendant –Bwari Area Council is a proper and necessary party in this Suit. He cited the case of:

BAKARE & ORS Vs AJOSE-ADEOGUN & ORS (2014) LPELR 25024 (SC)

That privity of contract applies in this case as there is a privity of contract between Plaintiff and Defendant by virtue of the allocation of the shop that was gutted by fire on 25/12/17. He referred to the case of:

BELLO Vs INEC (2010) LPELR-767 (SC)

That it is his prerogative to determine the person to sue in this case as per the pleadings and evidence he has to lead in support of his claims. That what is important in this case is his claim which give him right to initiate this action against the Defendant. That the Plaintiff is not sure that defendant has any dealing with any Insurance Company. That this Suit can be completely determined by this Court in the absence of any Insurance Company who is not a party to the Tenancy Agreement between him and Defendant. That Bwari Area Council is and remains necessary proper/party in this Suit. He urged the Court to so hold.

He referred to referred to the case of:

CORPERATE IDEAL INS. LTD Vs AJAOKUTA STEEL CO.LTD (2004) 7 NWLR (PT.1405) 165 @ 196 PARA D-G.

That the provision of Section 93 of the National Insurance Corp. Act which the Defendant relied on is not applicable in this case. That property of Govt. can be insured with any other insurer apart from Nigeria Insurance Corporation of Nigeria Act. That the case of the

Plaintiff is on the failure of Defendant to disclose whether or not it insured the market/burnt shop and on the failure to compensate him for all his losses. He urged Court to hold that the Defendant is a proper party in this Suit and to resolve the Issue NO.3 in his favour.

COURT:

It is clear provision of section 2 of Public Officers Act that any action against a Public Officer must be commenced within 3 months of the action. But it has severally held in Supreme Court over the years that for action against a Public Officer to be statute barred if not commenced within 3 months, it means that the action complained of is not continuous. That means that once the action complained of by the Plaintiff its such that it continues that provision cannot stand as a defence to the Public Officer whose action is complained of.

That means if the action happens once, any Suit challenging that action must be commenced within 3 months of the action. But where that is not the case such complaint about the act can be commence even several years after the beginning of the act for as long as the wrong complained of still continues at the time the Suit is instituted. So where that is the case any action commenced after the statutory 3 months is not and cannot be statute barred.

A-G RIVERS STATE Vs A-G BAYELSA STATE & ANOR (2013) 3 NWLR (PT.1340) 123@ 148-149

So once the action complained of or the damages and injury suffered continue there is continuous of legal injury and not just merely continuance of injurious effects of the legal injurious action complained of. This means that for that to happen there must be continuity of the

damage done as long as the wrong lasts. Where that is the case the limitation period under section 2 (a) Public Officers Protection Act will not apply. That is what the Supreme Court has reiterated severally in the following cases:

NWAFOR Vs NCS & Anor (2018) Ipelr-45034 (CA)

OLAOSEBIKAN Vs WILLIAMS (1996) 5 NWLR (PT.449) 456-457

IBUEKE & ORS Vs NNANCHI (2012) 12 NWLR (PT.1314) 327

INEC Vs OGBACHIBO LOCAL GOVT & ORS (2015) LPELR 24839(SC)

ADEPOJU Vs OKE (1999) 2 NWLR (PT.594) 154 @ 169

In all these cases where that is the case the court held that the defence of statute barred by virtue of the fact that the action commenced after 3 months cannot stand. So once there is continuance of damages or injury, any action instituted after 3 months is not statute barred. See the case of:

A-G RIVERS STATE Vs A-G BAYELSA STATE (Supra)

In this case the Plaintiff's case is on the Defendants refusal to repair the market, pay for the goods lost, and continues refusal to let the Plaintiff know about the insurance policy of the market which was gutted by fire on 25/12/17. That since the said date the Defendant had not done anything or given the information as to the Insurance Policy done as regards the market or any move made to compensate the Plaintiff for the loss of his goods. These issues are still continues despite the letters written to Defendnt. From all indication it is evident that the Defendant had not responded to the issue raised and the issues still subsist, hence this Suit. That being the case the Plaintiff is right in instituting this case

after the 3 months statutory date. It is the humble view of this Court that this action is not statute barred. So this Court holds. It had been held in plethora of cases that where there is a breach of contract, the issue of Public service Protection Act cannot stand as a defence in a case where a Public Officer is a defendant. This is so where the Public Officer has acted Ultra Vires his position. More so where he had acted outside the powers coloration of his office or statutory Constitutional duty.

NWANKWERE Vs ADEWUMI (1997) NWLR (PT.45) @ 49

ANOZIE Vs A-G FEDERATION (2008) 10 NWLR (PT.1095) 278 @ 290-291

It is the decision of the Court that section 2 Public Officer Protection Act does not apply where there is an abuse of office. See the case of:

SULE & ORS Vs ORISAJIMI (2019) LPELR 47039 (SC)

In this case the Plaintiff has complained of the continues withholding of the information about the insurance policy on the market to enable it make claims and most importantly on the failure of the Defendant to pay damages for his losses in the fire incidence.

The Plaintiff is not seeking to make Insurance claim but he is seeking information about any Insurance policy made. The Defendant had refused to disclose that information and the Defendant had been withholding such information. That is an act which is continuous and an act done contrary to its statutory and Constitutional duty. Since that is the case it cannot raise the provision of the section 2 (a) Public Officer Protection Act as a defence as the Defendant is doing in this case. This is because the said Section 2 (a) Public Officer Protection Act cannot stand as a defence to it because it had acted outside the power

coloration and powers of its office. That's what this Court holds. That is also the decision of the Court in the case of:

LAGOS CITY COMMUNITY TRANSPORT Vs SSJ OGUNBIYI (1969) ALL NLR 287 @ 289

It is imperative to state that Plaintiff is an allottee of the stall/shop and open space at the Defendant's Bwari market. He pays all the dues as he alleged. His goods were allegedly gutted by fire. He had made demands for compensation for the losses incurred in the fire of 25/12/17. Until the time of filing of this Suit the said demands were not met by the Defendants.

The losses are continues and the legal injury too. Those damages and still subsists are the losses too. So he is right to institute the action after 3 months. His action is not statute barred in that regard. So Court holds.

It is also important to point out that action on negligence can be taken up anytime. It is not affected by the 3 months Rule as stated in Section 2 (a) Public officers Protection Act where the Defendant is a public Officer as in the present case. It is not in the exclusive Jurisdiction of the Federal High Court to try the case as Defendants as Defendant is saying. See

NIGERIA AIRWAYS Vs ABE (1988) NWLR (PT. 90) 524 RATIO 6

Where the court held that the Tort of Negligence remains applicable notwithstanding the statute or law. It is not in doubt that the claim of the Plaintiff is also predicated on the negligence of the defendant in not having requisite fire hydrant and Insurance policy for the market. That for as long as the Damages continued fresh action can be taken at

anytime which is. What the plaintiff did in this case. He was right. This case is not Statute barred. So the Court holds.

It is the law and it is also trite that where the jurisdiction of the Court is questioned, the Court first assumes jurisdiction to entertain whether it has jurisdiction to determine the case before it. In this case the Defendant had challenged the case of the Plaintiff for being statute barred because it was instituted against a Public Officer after the statutory 3 months Rules and as such the Court lacked the jurisdiction to entertain the Suit because the Suit is incompetent.

It is imperative to state that the claim of the Plaintiff that determines the Courts competency and jurisdiction to entertain the Suit. Once the claims are what the Court can entertain it is said that the Court has jurisdiction. Again once the Court is made up of the required number of judicial personnel. It is said that it has competency. A closer look at the claim of the Plaintiff shows that it is based on demand for payment of damages, special and general damages suffered because of the fire incidence. It is also based on the negligence of the Defendant for not coming up with the information about the Insurance Policy of if any or absence of Insurance Policy as it pertains to the Insurance of the market. All these are matters that this Court has the right to entertain. So without further ado this Court has the jurisdiction to entertain the issues in dispute in this case. That is the humble view of this Court.

After all what the Plaintiff wants is compensation for the losses suffered because of the negligence of the defendant in this suit. On the matter being an action at the exclusive jurisdiction of the Federal High Court, it is the humble view of this Court that that submission by the Defendant is misleadingly wrong and highly

misconstrued. In this case the Plaintiff is not making any Insurance claim. He is only seeking for information on the insurance if any. There is no known or mention insurance company or Policy statement of any Insurance Company. There is no Insurance details and so there is no Insurance claim made. There is only one thing which the Plaintiff is seeking, from the defendant, that is any information about any insurance policy and damages for the loss of goods. Plaintiff wants to know whether there is any Insurance Policy or whether the market being a Public Building owned and managed by the Defendant, is insured or not.

Since that is the case the plaintiff's case is right before this Court as it is not a claim on Insurance Policy as no such policy is known to be in existence and in issue before this Court. So this Court holds.

The issue of insurance claim as envisaged by section 251 (1) (s) is not and does not include inquiry whether there is an insurance policy in existence or not as in this case.

Again the Court upholds the submission of the Plaintiff on the issue of Section 251 (1) (s) of the 1999 Constitution as amended that being the case this Court holds that it has the requisite jurisdiction to entertain this Suit and fully determine the issues in dispute.

It is imperative to point out as earlier stated that Demurrer proceedings does not exist in our jurisdictional sphere. In this case the Defendant only filed his Preliminary Objection and nothing more. There is no statement of Defence filed by the Defendant in this case even as I deliver this Ruling. This Court on that basis and on the other basis as elucidated in this Ruling hereby DISMISS the Preliminary Objection for lacking in merit and a waste of time of Court.

The Court therefore in exercise of its power to ensure that Justice is done to all parties at all time in any case pending before it, hereby Order the Defendant to file their statement of Defence within the next 28 days otherwise the Court will allow the Plaintiff to open and close its case and Judgment may be entered in its favour. Adjourned for Hearing. N50, 000.00 (Fifty thousand Naira) is awarded as Cost against the Defendant.

This is the Ruling of this Court delivered today theday of.....2020.

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K.N.OGBONNAYA

HON.JUDGE